

REMARKS

Applicant gratefully accepts allowance of claims 8 – 10 as indicated on Page 3 of the Examiner's Office Action dated July 16, 2003. Applicant also appreciates indication of allowance of claims 5 – 7, if amended to be in independent form including all of the limitations of the base claim and any intervening claims. Applicant has accordingly amended claim 5, which places claims 5 – 7 in form for allowance.

35 U.S.C. § 112 Rejection

Claim 2 was rejected under the provisions of 35 U.S.C. 112, second paragraph, as allegedly being indefinite for lack of proper antecedent basis. Applicant has amended claim 2 to provide the proper antecedent basis required.

35 U.S.C. § 103(a) Rejection

Claims 1 – 4 and 11 – 13 were rejected under the provisions of 35 U.S.C. § 103(a) as allegedly being unpatentable over Rudzinski or Newton et al. in view of Cheesman et al. Neither of the references separately or combined disclose the present invention.

The Federal Circuit noted in *In re Fritch* that:

Under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious "modification" of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. 23 U.S.P.Q. 2d 1780, 1784 (Fed. Cir. 1992).

Neither Rudzinski nor Newton et al. suggest the desirability of combining these references with Cheesman to accomplish Applicant's invention. Even if these references were combined, they would not disclose each element of claims 1 and 11. The Examiner indicates that Rudzinski or Newton disclose each feature of claims 1 and 11 with the exception of the emergency discharge door in the debris plate. The claims require locating the emergency discharge door in the debris plate, which is located above a normal water level. Thus, neither Rudzinski nor Newton teach the present invention. There is no suggestion in Rudzinski or Newton to combine their teachings with Cheesman.

The Examiner stated that Cheesman shows the use of an emergency discharge door on a plate separating the upstream and downstream ends of a screened channel. Applicant respectfully submits that the relief valve described in Cheesman is not comparable to the emergency discharge door used in the present invention. Accordingly, the combination of Rudzinski or Newton and Cheesman does not disclose each element of the present invention.

The relief valve in Cheesman (labeled as 150 in FIGS. 1 – 3) is mounted on the baffle 94 (see col. 4, ll. 43 – 44), which is submersed in the channel of water 14 at all times. The relief valve 150 has a valve member 170 that covers an opening 130 in the baffle 94. The valve member 170 vertically moves between a closed position that prevents water from flowing through the opening 130 and an open position that allows water to flow through the opening 130. The valve member 170 is controlled by control apparatus 238 to open the valve member 170 when a differential pressure in excess of a selected water pressure limit occurs. When the differential pressure drops below the differential pressure, the valve member 170 returns to the closed position. The relief valve 150 is designed to prevent damage to the traveling water screen system, not prevent water from overflowing out of the channel, as in the present invention.

Baffle 94 is located on one side of traveling screen 50, between traveling screen 50 and sidewall 22. There is no debris plate above traveling screen 50.

The emergency discharge doors 22 in the present invention are located in the debris plate 16 (part (c) of Claim 1), which is located above the grid screen 18 that is placed in the channel of water 12. The debris plate 16 and the emergency discharge doors 22 are located above the normal water level in channel 12 (see page 8, ll. 6 – 7 of present application). If the fluid flow through grid screen 18 is obstructed, the water level in the channel 12 will begin to rise. The emergency doors 22 can be opened to prevent the water from overflowing out of channel 12. An operator can lift the handle 52, which also moves the actuating rods and locking pins 50, to allow the emergency discharge doors 22 to move freely. Once the water rises up to the doors 22, the doors 22 will spring open due to the fluid pressure on the upstream side of the screen system 10, as described in Claims 1 and 11 of the present invention. Once the water level recedes, the doors 22 will close automatically due to gravity.

Neither Rudzinski nor Newton mention any mechanism or need for providing a bypass in case of screen clogging. The combination of the two references with Cheesman does not disclose the present invention, even if such combination was deemed proper, because the relief valve in Cheesman is not located in a debris plate above a bar screen as claimed in Claim 1 of the present invention. If Rudzinski or Newton were combined with Cheesman and if such combination were deemed proper, the combination still would not disclose each feature of Claim 1 of the present invention. Rather the combination would be to place a submerged relief valve in a baffle plate alongside the screen of Newton or Rudzinski and to monitor the water flow pressure upstream and downstream of the screens. The same reasoning applies for the method of filtering a fluid channel as claimed in Claim 11. Accordingly, the Applicant respectfully submits that the basis for the 103 rejection is improper and the rejection should be removed.

With respect to the dependent claims, claims 2 – 4 depend from claim 1 and claims 12 – 13 depend from claim 11 and therefore incorporate the same limitations. Claim 2 requires that the emergency door be hinged on a scraper frame. Claim 3 requires that the screen system include a movable actuator for opening and closing the emergency discharge door. Claim 4 requires that the door be mounted on a downstream side of the debris plate. These features are not shown in any of the cited references.

Summary

Claim 5 has been rewritten in independent form to include all of the limitations of the based claim and any intervening claims.

The current claims contain at least one element not found in the prior art, making the presently claimed invention patentably distinguishable from the disclosure of the cited references. The relief valve in Cheesman is not same as the emergency discharge doors of the present invention.

In commenting upon the references and in order to facilitate a better understanding of the differences that are expressed in the claims, certain details of distinction between the references and the present invention have been mentioned, even though such differences do not appear in all of the claims. It is not intended by mentioning any such unclaimed distinctions to create any implied limitations in the claims. Not all of the distinctions between the prior art and Applicant's

present invention have been made by Applicant. For the foregoing reasons, Applicant reserves the right to submit additional evidence showing the distinctions between Applicant's invention to be unobvious in view of the prior art.

The foregoing remarks are intended to assist the Examiner in re-examining the application and in the course of explanation may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not to be considered to be exhaustive of the facets of the invention that render it patentable, being only examples of certain advantageous features and differences that Applicant's attorney chooses to mention at this time.

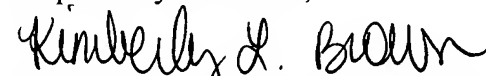
Reconsideration of the application and allowance of all of the claims are respectfully requested.

In view of the foregoing Response, Applicant respectfully submits that all of the claims are allowable, and Applicant respectfully requests the issuance of a Notice of Allowance.

The Commissioner is hereby authorized to charge all fees and any additional fees that may be required or credit any overpayment to Bracewell & Patterson, L.L.P. Deposit Account No. 50-0259 (Order No. 2135JB.044769).

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Respectfully submitted,



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